

DISCUSSION OF THE AMENDMENT

Claim 9 has been amended to depend on Claim 8.

New Claims 12-14 have been added. Claim 12 is based on the product of Claim 1, made by the process of Claim 5. Claims 13 and 14 are analogous to Claims 1 and 12, respectively, but are drawn to the elected species.

The Abstract has been amended into one paragraph.

No new matter has been added by the above amendment. Claims 1-14 are now pending in the application. Claims 1, 2 and 4-14 are active; Claim 3 is drawn to a non-elected species.

ELECTION

The Examiner has required an election of species, asserting a lack of unity of invention because the species are not so linked as to form a single general inventive concept under PCT Rule 13.1. The species are as follows:

- a. A lithium cobalt oxide composition of $\text{LiCo}_{1-x}\text{M}_x\text{O}_2$ wherein $x=0$;
- b. A lithium cobalt oxide composition of $\text{LiCo}_{1-x}\text{M}_x\text{O}_2$ wherein $0 < x \leq 0.02$.

Applicants have elected **with traverse** species b.

Claims 1, 2 and 4-14 read on the elected species.

The Examiner finds that none of the claims are generic. The Examiner is incorrect.

Claims 1 and 4-12 are generic.

Restriction is only proper in a national stage application filed pursuant to 35 U.S.C. 371 if the application lacks unity of invention under 37 CFR 1.475. See 37 CFR 1.499 and MPEP 1893.03(d). The Examiner has not made out a case of lack of unity of invention.

A group of inventions is considered linked as to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature, i.e., the technical feature that defines the contribution which each claimed invention, considered as a whole, makes over the prior art. See, for example, PCT Rule 13.2 and Examples 1-30 of Annex B Part 2 of the PCT Administrative Instructions as in force from April 1, 1995 contained in Appendix AI of the MPEP.

The special technical feature here that informs all the claimed inventions is a hexagonal lithium-cobalt composite oxide for a lithium secondary cell, which is represented by the formula $\text{LiCo}_{1-x}\text{M}_x\text{O}_2$, wherein x is $0 \leq x \leq 0.02$ and M is at least one member selected from the group consisting of Ta, Ti, Nb, Zr and Hf, and which has a half-width of the diffraction peak for (110) face at $2\theta = 66.5 \pm 1^\circ$, of from 0.070 to 0.180°, as measured by the X-ray diffraction using CuK_α as a ray source.

The Examiner's attention is drawn to the following from MPEP §803:

If the search and examination of an entire application can be made without serious burden, the Examiner **must** examine it on the merits, even though it includes claims to distinct or independent inventions. (emphasis added).

It would not appear to pose a serious burden for the Examiner to search and examine the entire application, even if unity of invention did not exist.

In view of the above, it is respectfully requested that the Restriction Requirement be withdrawn, and that all claims of the application be examined.